

REMARKS

The application has been amended and is believed to be in condition for allowance.

Claims 2 and 6 have been canceled, without prejudice. Claims 10-12, and 14-18 are withdrawn.

Claims 1, 3-5, 7-9, and 13 have been amended to sharpen their recitation of the invention and in consideration of U.S. practice and preferences. The amendments introduce no new matter and recite the invention elected with the response of August 2, 2007 and the species elected with the response of October 23, 2007.

New claims 23-27 are directed to the invention elected with the response of August 2, 2007 and the species elected with the response of October 23, 2007. The new claims further find support in the specification, drawing figures, and the claims as originally filed; no new matter is introduced with these claims.

The Official Action objected to claim 1 over formal matters, and rejected claims 6-9 and 13 under 35 USC 112, second paragraph for indefiniteness.

In reply, claim 1 has been amended responsive to the Official Action's objections, and claims 6-9, and 13 have been amended to obviate the rejection under 35 USC 112, second paragraph. It is further respectfully submitted that new claims 23-27 avoid the Official Action's formal objections and

rejections. Withdrawal of the Official Action's formal objections and rejections are respectfully requested.

The Official Action rejected claims 1-6 and 13 under 35 USC 102(b) as being anticipated by BAUMGARTNER (U.S. Publication 2002/0048553; hereinafter BAUMGARTNER).

The Official Action rejected claims 1-2, 5-9, and 13 under 35 USC 103(a) as being unpatentable over SCHMIDT (U.S. Patent 5,354,551; hereinafter SCHMIDT) in view of ALEXANDER (WO 2002/026078, English Equivalent U.S. Publication 2004/0091431; hereinafter ALEXANDER).

In reply, claims 1, 3-5, 7-9, and 13 have been amended, as stated above. It is respectfully submitted that claims 1, 3-5, 7-9, and 13 are patentable over the references BAUMGARTNER, SCHMIDT, and ALEXANDER for at least the reasons that follow.

The Rejection over Novelty is Traversed

The Official Action offers BAUMGARTNER as anticipating the invention insofar as the reference discloses a semi-solid composition suitable for use in oral or dental care comprising at least one gelling agent providing, upon solidification, a semi-solid gel framework comprising sufficient containment means for at least one active ingredient during storage.

It is respectfully submitted that BAUMGARTNER does not teach a homogenous and non-encapsulated single-dose gel bead

comprised of an active ingredient intimately mixed with at least one gelling agent, as recited by amended claim 1.

BAUMGARTNER discloses capsules and/or binding particles suspended in a creamy toothpaste mass, the capsules and/or binding particles configured to break open under mechanical influence.

Contrary, to the invention claimed, BAUMGARTNER teaches the capsules and/or binding particles comprising a shell casing (Figure 1, element 2) enclosing a space wherein a flavor ingredient is contained (Figure 1, element 3). Flavoring is injected through a specially designed nozzle into the gelatinous shell casing as the casing cures so that drops of flavoring will be covered by the jelly-like substance (paragraph [0012], final sentence). That is, the jelly-like material forming the capsules and/or binding particles form cavities within the capsules to be filled with flavoring oil and other ingredients (paragraph [0017]).

Nowhere in BAUMGARTNER, either in the specification or the drawing figures, is there any teaching or suggestion of a homogeneous, non-encapsulated gel bead comprising a gelling agent intimately mixed with an active ingredient, as required by amended claim 1. BAUMGARTNER clearly teaches the jelly-like material and the other contents of the capsules and/or binding particles as distinct, separate components (Figure 1), neither mixed or homogeneous as required by the claim.

Therefore, it is respectfully submitted that BAUMGARTNER does not anticipate the invention as claimed in claim 1, and that claim 1, and claims depending therefrom, are patentable over BAUMGARTNER. Reconsideration and withdrawal of the anticipation rejection are respectfully requested.

It is further respectfully submitted that claims 23-27 are patentable over BAUMGARTNER for at least the same reasons set forth above as to claims 1, 3-5, 7-9, and 13.

Obviousness: Common Ownership in view of §103(c)

As to the obviousness rejection, it is firstly respectfully submitted as to the secondary reference ALEXANDER, in accordance with MPEP 706.02(1)(2), that the instant application and the reference ALEXANDER were, at the time the invention was made, commonly owned. It is therefore respectfully submitted that the obviousness rejection is improper according to 35 USC 103(c).

The Rejection over Obviousness is Further Traversed

In addition to the statement set forth above as to 35 USC 103(c), it is respectfully submitted that the obviousness rejection is improper as neither SCHMIDT nor ALEXANDER, individually or in combination, teaches or suggests all the features recited in claim 1 of the application.

SCHMIDT describes a water-soluble pre-segmented film or foil wherein active agents and additives are formulated in a binding agent or a mixture of binding agents consisting of water-soluble or water-sellable film forming substances (column 1, lines 60-64).

The Official Action, on page 6, notes that SCHMIDT does not teach compositions as beads, or that a single bead weighs one gram.

The Official Action offers ALEXANDER as teaching a free-flow toothpaste composition in the form of bead-shaped capsules. The Official Action concedes, however, that ALEXANDER does not teach a capsule that dissolves in the mouth, stating that toothpaste is released from the ALEXANDER capsule when pressure is applied, and the capsule is subsequently disposed of. The Official Action further concedes that ALEXANDER does not teach capsules or beads as gel beads free of a coating.

The Official Action contends that it would have been obvious to one of skill in the art to have formulated bead shapes and added colors to the compositions of the primary reference, motivated by the desire to make the composition more attractive to children and to promote dental hygiene, and further, to have used the film formulation of the primary reference to make the beads of the secondary reference.

Applicants respectfully disagree. In contrast to the invention as claimed, wherein the release of active ingredient

requires disruption, SCHMIDT teaches a formulation having a principle mechanism to dissolve with water in order to release its payload ingredients (column 2, lines 28-42; column 1, lines 62-63). It is respectfully submitted that the SCHMIDT formulation, designed to absorb water over a wide surface area such as a strip, is unsuitable in the shape of a bead as proposed by the Official Action. To roll up the SCHMIDT formulation as a compact bead shape would result in too long a delay before it could be used in the mouth as a toothpaste. One of skill would readily understand that the outside of a bead made in manner would be in solution long before the inside starts to dissolve.

Therefore, it is respectfully submitted that the proposed combination does not teach or suggest the bead as claimed in claim 1 and, further, that the formulation of SCHMIDT teaches one of skill away from forming their product as a bead. Accordingly, it is respectfully submitted that the invention as recited by claim 1, and claims depending therefrom, is patentable over SCHMIDT in view of ALEXANDER.

It is further respectfully submitted that new claims 23-27 are patentable over SCHMIDT in view of ALEXANDER for at least the same reasons set forth above.

From the foregoing, it will be apparent that applicants have fully responded to the January 15, 2008 Official Action and that the claims as presented are patentable. In view of this,


applicants respectfully request reconsideration of the claims, as presented, and their early passage to issue.

In order to expedite the prosecution of this case, it is requested that the Examiner telephone the attorney for applicants at the number set forth below if the Examiner is of the opinion that further discussion of this case would be helpful.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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